

From: Faust, Josh
Sent: Friday, February 15, 2013 9:43 AM
To: Criss, Jeremy
Subject: RE: Tree Related Bills and Sediment Control Bill

Jeremy,

I believe that they will still be able to do work on the trees in their prescriptive ROW. I will confirm with Amanda, but that is just my initial thoughts. As for particular language added to the bill, that is up to our lawyers.

-Best,

From: Criss, Jeremy
Sent: Friday, February 15, 2013 9:37 AM
To: Faust, Josh
Cc: Mihill, Amanda; Faden, Michael
Subject: RE: Tree Related Bills and Sediment Control Bill

Hello Josh,

Thank you for the message below and the opportunity to understand the amendment offered by Amanda.

It is helpful to understand that Section 49-6A describes prescriptive rights of way and includes them as a public right of way.

There remains a question surrounding the wording of this amendment as it only applies to A licensed Tree Expert.

How will this amendment impact a farmer who performs work on a tree along the prescriptive right-of-way of the farm that he owns?

As for the Bill 35-12 attached you will see the message that I sent to Stan Edwards regarding the amendment to address the comments he provided to the T & E Committee on January 28, 2013 that Bill 35-12 will not apply to agricultural uses or activities.

We are working with Rick Brush in DPS regarding Bill 1-13 and the amendments suggested by the agricultural community as outlined in the string of messages below.

Please let me know the answer to the question raised above regarding the amendment to Bill 41-12.

Thanks J

Jeremy V. Criss
Agricultural Services Manager
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Agricultural Services Division
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301-590-2830
301-590-2839 (Fax)
jeremy.criss@montgomerycountymd.gov
<http://www.montgomerycountymd.gov/agservices>

From: Faust, Josh
Sent: Thursday, February 14, 2013 12:45 PM

To: Criss, Jeremy
Subject: FW: Tree Related Bills and Sediment Control Bill

Jeremy,

Here is a brief update in regards to your email yesterday. I passed it onto the lawyers downstairs.

-Best,

From: Mihill, Amanda
Sent: Thursday, February 14, 2013 12:44 PM
To: Faust, Josh
Cc: Faden, Michael
Subject: RE: Tree Related Bills and Sediment Control Bill

Josh,

I can't speak to Bill 1-13 – Mike is the only attorney working on that bill.

For 35-12, we'll take a look at his suggested amendment and also reach out to Stan to see what comments he may have about that amendment.

Regarding 41-12, we have proposed the following language in the amendments that I e-mailed this morning:

(2) A licensed tree expert need not obtain a permit for work performed on:
(D) a tree that is in the right-of-way of a road declared as a public highway under Section 49-6(a).

Code §49-6A describes prescriptive easements. Does Jeremy have concerns with the amendment we proposed?

Amanda

From: Faust, Josh
Sent: Thursday, February 14, 2013 12:37 PM
To: Mihill, Amanda
Cc: Faden, Michael
Subject: FW: Tree Related Bills and Sediment Control Bill

Hi Amanda,

Here is Jeremy Criss's email about some proposed amendments to ours and some other bills. We met with the farmers and they were all particularly riled up about these ones. If there was anyway we could take a look at these and maybe see what your thoughts are....??

-Best,

From: Criss, Jeremy
Sent: Wednesday, February 13, 2013 4:23 PM
To: Faust, Josh
Subject: FW: Tree Related Bills and Sediment Control Bill

Hello Josh,
This message is a follow up from my voice message today.
Outlined below you will see the suggested amendments for the Tree Related Bills.
Please let me know if you have any questions.
Thanks J

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From: Criss, Jeremy
Sent: Tuesday, February 12, 2013 1:23 PM
To: Jones, Diane; Boucher, Kathleen; Brush, Rick
Cc: Edwards, Stan; Hoyt, Bob; Miller, Laura; Linkletter, Brett; Compton, Keith; Wilson, Walter; Plummer, David C.; Spicer, Malcolm
Subject: RE: Tree Related Bills and Sediment Control Bill

Hello everyone,
I have provided below sections from the Tree Related Bills and included the amendments that were suggested by the agricultural community during the February 6, 2013 meeting with Council member Berliner.
Attached you will find some follow up messages from the February 6, 2013 meeting and the suggestions for amendments to the Tree Related Bills.
Please let me know if you have any questions.
Thanks J

Street Tree Bill 41-12

74 (b) Applicability; Exceptions.
75 (1) The following activities do not require a right-of-way and
roadside tree work permit:
76 (A) cutting and clearing a prescriptive right-of-way or other
roads in the rural and agricultural regions of the County.

Tree Canopy Conservation Bill 35-12

120 55-5. Exemptions.
121 This Chapter does not apply to:
122 (a) any [tree nursery activity] agricultural activity performed
with an approved Soil Conservation
123 and Water Quality Plan as defined in Section 19-48;

Erosion and Sediment Control Expedited Bill 1-13

The bill currently reads as follows:

Agricultural land management practice means ~ method or procedure
used
33 in the cultivation of land to further crop and livestock production and
34 conservation of related soil and water resources. *Agricultural land*
35 *management practice* does not include logging and timber removal
operation
or wholesale or retail nursery operation.

We propose the following to remain consistent with current state law:

“Agricultural land management practices” means those methods and procedures
used in the cultivation of land in order to further crop and livestock production
and conservation of related soil and water resources. Logging and timber
removal operations are not to be considered a part of this definition.

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From: Jones, Diane
Sent: Monday, February 11, 2013 6:25 PM
To: Boucher, Kathleen; Brush, Rick
Cc: Edwards, Stan; Hoyt, Bob; Miller, Laura; Linkletter, Brett; Criss, Jeremy; Compton, Keith;
Wilson, Walter; Plummer, David C.; Spicer, Malcolm
Subject: RE: Tree Bills and Sediment Control Bill

Rick, If amendments are to be sought, please have them get us language ASAP for consideration.
Thank you. Diane

From: Boucher, Kathleen
Sent: Monday, February 11, 2013 6:23 PM
To: Brush, Rick
Cc: Jones, Diane; Edwards, Stan; Hoyt, Bob; Miller, Laura; Linkletter, Brett; Criss, Jeremy; Compton, Keith; Wilson, Walter; Plummer, David C.; Spicer, Malcolm
Subject: Tree Bills and Sediment Control Bill

Thx Rick. See comments in red below.

-----Original Message-----

From: Brush, Rick
Sent: Monday, February 11, 2013 4:30 PM
To: Boucher, Kathleen
Cc: Edwards, Stan; Miller, Laura; Jones, Diane; Hoyt, Bob; Linkletter, Brett; Criss, Jeremy; Plummer, David C.; Compton, Keith; Wilson, Walter; Spicer, Malcolm
Subject: Tree Bills and Sediment Control Bill

Kathleen - I just wanted to update you on a conversation I had with Jeremy Criss and David Plummer late last week. They have met several times with various agricultural organizations and talked to me about a few changes the ag community would like to see to these bills.

Street Tree Bill -- I believe David and Jeremy may have been part of a group that met with Roger Berliner on this bill. From what they said Roger may propose an amendment that exempts prescriptive rights of way from the requirements in the bill. I believe the ag community would like the exemption expanded to include any County road in the agricultural zone

Diane Jones is the Issue Manager now on this bill and at the appropriate time we need to go back to the CE to get his position on recommended amendments to this bill. I am depending on Diane to recommend the appropriate time to go back to CE.

Tree Canopy Bill --- From what I understand, the ag community would like the exemption for forest harvest sediment control permits more clearly spelled out in the bill. They understand that sediment control permits are not generally required for agricultural practices and the construction of agricultural buildings. Therefore, these practices would be exempt from tree canopy requirements. However, they are hoping for language changes for clarification.

I am copying DEP for a recommendation as to how to handle this issue. My initial thoughts are that an amendment might not be needed but we can certainly make sure the legislative record addresses this issue.

Sediment Control Bill -- Again, the ag community would like the exemption language for ag activities more clearly spelled out. They would also like forest harvest activities identified as an agricultural practice even

though it requires a sediment control plan approval and inspection (i.e. a permit) in state natural resource law. Sediment control permits for forest harvest activities were added to the County Code when the Forest Conservation Law was added (around 1990).

David and Jeremy are not questioning the need for a permit for forest harvest. They would just like it stated a bit differently to recognize that it is an agricultural practice.

They would also like the permit requirement for nursery activities clarified to exempt the portion of the nursery operation that includes the planting, cultivation, and harvesting of trees, shrubs, and landscape material in "fields" but includes the wholesale/retail portion of the operation in permitting requirements. In truth the field portion of nursery operations is generally exempt in State law and regulation. I believe the requirement for permitting of wholesale and retail nursery operations was specifically added to the County Code somewhere around 1989 or 1990 -- mainly at the request of MNCPPC staff, though I don't remember the rationale.

I defer to DPS on whether any amendment is needed to the Sediment Control Bill.

I told Jeremy and David that they or the ag community should suggest language changes. **Very Good Idea.** In truth, I don't have a problem with their general suggestions for further defining agricultural activities for clarity.

Rick

Sent from my iPad

Kathleen Boucher
Assistant Chief Administrative Officer
Office of the County Executive
Montgomery County, Maryland
240-777-2593

Attachment B

From: Criss, Jeremy

Sent: Tuesday, February 05, 2013 1:16 PM

To: Navarro, Nancy; Rice, Craig; Floreen, Nancy; Leventhal, George; Riemer, Hans; Berliner, Roger; Andrews, Phil; Elrich, Marc; Ervin, Valerie

Cc: 'David Weitzer'; Plummer, David C.; Faden, Michael; Levchenko, Keith; Brush, Rick

Subject: RE: Agricultural Advisory Committee Comments on Bill 1-13 Erosion and Sediment Control

Dear County Council members,

Attached please find a letter from the Agricultural Advisory Committee regarding Bill 1-13 Erosion and Sediment Control.

Please let us know if you have any questions.

Thanks J

Jeremy V. Criss

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AGRICULTURAL ADVISORY COMMITTEE

Attachment B

February 5, 2013

The Honorable Nancy Navarro
Montgomery County Council President
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Navarro:

Bill 1-13 Erosion and Sediment Control

On Behalf of the Montgomery County Agricultural Advisory Committee-AAC we are provided these comments surrounding Bill 1-13 Erosion and Sediment Control.

The AAC does not support the proposed definition of an agricultural land management practice that removes reference for logging or timber removal and wholesale or retail nursery operation as agricultural land management practices.

The Chapter 59 Zoning of the County Code specifically references the definition of Agriculture that includes the products of forestry and horticulture that are inherently related to logging, timber, and nursery operations. Farmers consider the products of forestry and timber and products of horticulture as crops they can produce and harvest as a permitted use. If logging, timber removal and nursery operations are no longer considered an acceptable agricultural practice under Chapter 19 this will create a conflict in the County Code that must be addressed to prevent future law suits as farmers continue to farm.

The AAC acknowledges the proposed House Bill 623 in the 2013 Maryland Legislative Session proposes a similar definition for agricultural management practice and the AAC is also opposed to this definition under HB 623. The AAC suggests that we should wait until the conclusion of the 2013 Maryland Legislative Session on the outcome of HB 623 to recommend changes to Chapter 19 of the County Code.

The AAC thanks the County Council for this opportunity to present our views and please let us know if you have any questions.

Sincerely,

David Weitzer, Chairman